IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1067

FIRST NATIONAL BANK OF CORNELIA, CORNELIA, GEORGIA, *Petitioner*,

v.

W. M. JACKSON, Superintendent of Banks of the State of Georgia

and

THE FIRST NATIONAL BANK OF GAINESVILLE, GEORGIA, ET AL., *Respondents*.

REPLY BRIEF

We need make only a few comments about the Brief of the respondent banks, because virtually all of the points made in that Brief have already been fully answered in our Petition.

The Brief twice assumes on page 4 that the armored car messenger service is provided by the bank itself.

But the unequivocal showing in the record is that this service is provided entirely by another company, The Parent Messenger Service Corporation, which in turn is owned by still a third company, The First National Cornelia Corporation.

The respondent banks also attempt to distinguish decisions in other circuits on the ground that they involved two or more banks which were "completely separate economic, functional and legal entities" (p. 5). Actually, the same is true here. But in the *Gidney* case,[1] to cite one example, the whole argument of the protesting plaintiff was that one bank had been formed by eight out of the nine directors of another bank for the specific purpose of avoiding the prohibition against branch banking. It is difficult to see why the two banks in that case were "completely separate economic, functional and legal entities" and the companies in the instant case were not.

The Brief of the Superintendent of Banks of Georgia takes the position that the issue of branch banking is not even involved in this case. He says, in fact: "We do not contend that the armored car banking service as now operated is a 'branch' of the Bank of Cornelia within the meaning of 12 U.S.C. § 36" (p. 5). Instead, says the Superintendent, the armored car service constitutes "the business of banking" (p. 5). Therefore, it makes no difference *who* operates the armored car service, since it is a "banking service" (p. 6) which cannot be carried out without being chartered as a bank (p. 5).

---

[1] *Camden Trust Co.* v. *Gidney*, 301 F.2d 521 (D.C. Cir.), *cert. denied*, 369 U.S. 886 (1962).

Several observations are in order concerning this unique approach.

First, we note that the respondent banks do not adopt it. Their brief makes no argument along this line. More to the point, the Court of Appeals, as we read its decision, did not adopt it either. It held that "The law of this case is that armored cars may not be operated as branch banks by federally chartered banks * * *" (App. B to Petition, p. 14a).

Secondly, we fail to see how the Superintendent can argue on the one hand that "it matters not who owns the armored car service" (p. 6) and on the other that "Neither the Superintendent of Banks nor the intervening banks in this case has ever implied that the present activities of a typical armored car company would run afoul of Georgia banking law" (p. 7). If the service is illegal regardless of who operates it, why is a Brinks or Wells Fargo armored car service perfectly proper?

But most importantly, if this Court were to reject our interpretation of the branch-banking statute, we submit that the proper disposition of this case, in the light of the Superintendent's position, would be a remand to the Court of Appeals with directions to retain jurisdiction until petitioner's parent company has made application to the Federal Reserve Board, and the Board has acted, under the newly-enacted "Bank Holding Company Act Amendments of 1970," 12 U.S.C. § 1841 *et seq.*

On December 31, 1970, following the filing of our Petition for a Writ of Certiorari on December 7, the Bank of Cornelia's parent company for the first time

became subject to these Amendments.[2] The Amendments allow the Federal Reserve Board to pass upon all acquisitions by registered bank holding companies. In the case of non-bank acquisitions, the Board must find that the activities carried on by the acquired company are "so closely related to banking * * * as to be a proper incident thereto" (12 U.S.C. § 1843(8)). If the Board so finds, the parent company is allowed to carry on the approved activities. Since the Georgia Superintendent of Banks takes the position that the activities involved here are not only "closely related" to banking but in fact are banking itself, we assume he would support our application to the Board.

The Georgia Superintendent blandly states that "the cashing of a check by a grocery store is not a banking business" (p. 8), but he fails to say why. The statute, 12 U.S.C. § 36(f), provides that the term "branch" shall be held to include any branch place of business at which, *inter alia*, deposits are received or checks are paid. If an armored car is a branch because it receives deposits, why is not a grocery store a branch because it pays checks?

Finally, the Georgia Superintendent states that the Comptroller of the Currency "opted out" from the current phase of this case "and has taken no active part in the proceedings now on appeal" (p. 4). The Superintendent fails to say why the Comptroller

---

[2] Like other companies now subject to the Act, the Bank of Cornelia's parent corporation has not registered under the Act because the Federal Reserve Board has not yet issued the required forms of regulations governing such registration. There can be no question, however, that the bank and its parent are in fact now subject to the Act's provisions.

"opted out." The reason is revealed in the following letter, which was made part of the record below:

THE ADMINISTRATOR OF NATIONAL BANKS
WASHINGTON, D. C. 20220

Jan. 21, 1970

Office of the
Comptroller of the Currency

Mr. E. Barrett Prettyman
Hogan & Hartson
815 Connecticut Ave., N. W.
Washington, D. C. 20006

Dear Mr. Prettyman:

This is in response to your letter to the Comptroller of January 16, 1970, concerning the complaint filed in the Northern District of Georgia captioned *First National Bank of Cornelia* v. *W. M. Jackson*. You advise that a hearing will be held on the issues raised by that complaint on January 23, 1970, and ask whether the Comptroller intends to be represented at that hearing.

It appears that 80 percent of the outstanding shares of First National Bank of Cornelia are or will be owned by First National Cornelia Corporation, a Delaware business corporation. First National Cornelia Corporation will own all or substantially all of the stock of another Delaware business corporation called The Parent Messenger Service Corporation. The Parent Messenger Service Corporation will conduct an armored car messenger service similar to that of Brink's, Inc. or Wells Fargo Protective Service, Inc., executing contracts with various businesses to transport funds as a messenger or agent for individual businesses to and from the First National Bank of Cornelia.

The Comptroller's Office does not intend to request the Department of Justice to represent it at

the hearing on Friday, January 23, 1970. Neither First National Cornelia Corporation nor its subsidiaries other than First National Bank of Cornelia are subject to the general administrative jurisdiction of the Comptroller's Office, and the Office therefore has not been called upon and does not have jurisdiction to approve or disapprove the operations of either First National Cornelia Corporation or The Parent Messenger Service Corporation.

Very truly yours,

ROBERT BLOOM
Chief Counsel

In other words, the Comptroller "opted out" because branching is no longer part of petitioner's operation.

For all of these reasons, certiorari should be granted and the judgment of the Court of Appeals reversed.

Respectfully submitted,

JOSEPH A. GRIGGS
P. O. Box 489
Cornelia, Georgia 30531

E. BARRETT PRETTYM[illegible], JR.
PETER F. ROUSSELOT
Hogan & Hartson
815 Connecticut Avenue
Washington, D. C. 20006

Attorneys for Petitioner